

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

CHRISTOPHER MILLER,

Plaintiff,

3:10-cv-0597 (BKS/ML)

v.

CITY OF ITHACA, NEW YORK, et al.,

Defendants.

Appearances:

For Plaintiff:

AJ Bosman, Esq.
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Blossvale, NY 13308

For Defendants:

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Hon. Brenda K. Sannes, United States District Judge:

ORDER

Currently pending before the court in connection with this action is an application for an order directing plaintiff Christopher Miller to appear for a further examination by defendants' retained psychiatrist, Dr. Liza Gold, M.D., pursuant to Rule 35 of the Federal Rules of Civil Procedure. (Dkt. No. 836). The basis for this request is the defendants' contention that seven years has passed since the prior examination, plaintiff seeks ongoing emotional distress damages and the expert witness who previously examined plaintiff, psychiatrist Michael Lynch, M.D., is now 86 years old and has retired. *Id.* Plaintiff opposes the motion, arguing, *inter alia*, that Defendants have failed to meet the heightened burden of good cause for another examination. (Dkt. No. 842).

A telephonic conference was conducted concerning defendants' motion on August 7, 2019, where both counsel presented argument. At the conclusion of the hearing, and after considering all of the submissions and argument by counsel, I granted defendants' motion and ordered a further examination for the reasons set forth on the record.

Based upon the foregoing, the discussion during the telephone conference, and the court's bench decision, which is incorporated herein by reference, it is hereby

ORDERED as follows:

- 1) Defendants' motion for leave to conduct a further Rule 35 psychiatric examination of the plaintiff, Dkt. No. 836, is **GRANTED**.
- 2) The examination shall occur at a date, time, and location mutually agreed upon by the parties.
- 3) The examination shall last no longer than four hours.
- 4) The examination shall be conducted by Dr. Liza Gold, M.D..

- 5) The examination shall be confined to the topics and/or tests that are recognized as standard by the American Board of Psychiatry and Neurology for determining the plaintiff's current mental condition and whether as a result of the defendants' alleged conduct, he has suffered any psychic injury.
- 6) The examination shall be tape recorded by an independent third party and a recording of the examination shall be made available to counsel for plaintiff and for defendants. A transcript of the recording will also be produced and provided to both counsel.
- 7) Plaintiff is directed to cooperate fully with the scheduled examination.
- 8) Within two weeks following the examination, Dr. Gold shall provide a written report detailing her findings, including diagnoses, conclusions, and the results of any tests. That report, together with any notes prepared by Dr. Gold of the examination, shall be deemed "highly confidential" for purposes of the parties' Rule 16(c) protective order in the case, Dkt. No. 175.
- 9) Promptly upon its receipt from Dr. Gold, defendants' counsel shall provide the plaintiff with a copy of Dr. Gold's written report.

IT IS SO ORDERED.

Dated: August 8, 2019
Syracuse, New York


Brenda K. Sannes
U.S. District Judge